

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB**

Mailed: June 18, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Bhagavan Antle**

Serial No. 75750471

**B. Craig Killough of Barnwell Whaley Patterson & Helms, LLC
for Bhagavan Antle**

Elizabeth J. Winter, Trademark Examining Attorney, Law
Office 113 (Odette Bonnet, Managing Attorney)

Before Simms, Seeherman and Chapman, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Bhagavan Antle, a U.S. citizen, has appealed from the
Trademark Examining Attorney's final refusal to register
the mark T.I.G.E.R.S. THE INSTITUTE OF GREATLY ENDANGERED
AND RARE SPECIES, in typed form, for services which were
amended to "educational services, namely conducting
demonstrations and exhibitions to educate and entertain the

public about wildlife and the preservation of endangered species."¹

Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of his identified services. Specifically, the Examining Attorney contends that the mark immediately describes the principal topics or subject matter of applicant's educational services and the type of entity that provides the services. "The services are offered by an *institute* in connection with educational services featuring information on *greatly endangered and rare species*, particularly *tigers*." Examining Attorney's brief, p. 4 (emphasis in original).

The appeal has been fully briefed, but applicant did not request an oral hearing.²

Throughout the course of the prosecution of the application, and in his appeal briefs, applicant, through his counsel, has made statements acknowledging the descriptiveness of parts of his mark, viz.:

¹ Application Serial No. 75750471 filed August 9, 1999, and asserting a bona fide intent to use the mark in commerce.

² After applicant filed his appeal brief, the Examining Attorney, who had been newly assigned to handle the application, requested remand in order to supplement the record and to issue a new requirement (for additional information). When the appeal was resumed, applicant filed a supplemental appeal brief. Applicant also filed a reply brief.

Applicant submits that the words, or some portion of the words, THE INSTITUTE OF GREATLY ENDANGERED SPECIES, which appear in the mark, are descriptive of the Applicant's services as set forth in the amended identification of services. Applicant will enter an appropriate disclaimer as required by the Examining Attorney. Response to first Office action, filed June 12, 2000. (In that response, applicant argued that it was the T.I.G.E.R.S. portion of the mark that is suggestive and not merely descriptive.)

In a communication filed on June 12, 2000, the Applicant recognized that the portion of the mark "THE INSTITUTE OF GREATLY ENDANGERED AND RARE SPECIES" is descriptive, and offered a disclaimer of this wording.
Brief, p. 2.

...a consumer seeing the term "T.I.G.E.R.S." would not, forthwith, receive an immediate idea of the nature of Applicant's services...without resorting to the descriptive portion of the mark from which the acronym is formed.
Brief, p. 3.

In view of the Examining Attorney's Office Action dated December 6, 2002, which was entered after the filing of Applicant's Appeal brief, the Applicant abandons his argument that the T.I.G.E.R.S. portion of his mark, standing alone, is not descriptive of Applicant's services.
Supplemental brief, p. 3.

In view of the materials submitted by the Examiner since the Applicant submitted his Appeal Brief, Applicant does not dispute that tigers are a

featured animal on Applicant's website.
Supplemental brief, p. 3.

In view of the Examining Attorney's focus that tigers are an endangered species, Applicant agrees that the terms "tiger" and "endangered" and/or "species" may be subject to disclaimer. Supplemental brief, p. 5, withdrawing applicant's previous suggestion that the term "The Institute Of Greatly Endangered And Rare Species" should be disclaimed.

As stated in the Applicant's Supplemental Brief, the term "Endangered Species" is a descriptive term that is used by competitors...."
Reply brief, p. 2.

In his reply brief, applicant states that his acknowledgement that "Institute of Greatly Endangered and Rare Species" is merely descriptive was made in error. However, it was not until applicant filed his supplemental appeal brief, after the close of examination, that applicant withdrew this admission. Normally, an Examining Attorney would be entitled to rely on such an admission, since the withdrawal was made at a point that the Examining Attorney could no longer submit evidence to support her position. Even if we do not consider this admission, however, we find that, as discussed below, the record supports a finding that THE INSTITUTE OF GREATLY ENDANGERED AND RARE SPECIES, as well as the mark as a whole, is merely descriptive of applicant's services.

In support of the refusal of registration, the Examining Attorney has submitted, inter alia, dictionary definitions of the words in the mark, NEXIS excerpts, and third-party registrations showing disclaimers of the relevant terms. For example, "institute" is defined, in part, as "an organization founded to promote a cause"; "an educational institution, especially one for the instruction of technical subjects"; and "a usually short, intensive workshop or seminar on a specific subject."³ The NEXIS excerpts refer to institutes that deal with endangered species, e.g.:

...you have a powerful tool for preserving endangered species," she says.

The institute is on about 1,200 acres...

"USA Today," December 14, 1999

...The Center for Biological Diversity petitioned the federal government to list white abalone as an endangered species.

The institute—a collaboration of county educators, a fish-farming business....

"Ventura County Star," May 8, 1999

³ The American Heritage Dictionary of the English Language, 3d ed. © 1992.

...the Audubon Institute protects the rare and endangered animals in their care in the future.

"The Times-Picayune," February 16, 1999

...the Earth Island Institute, which specializes in campaigns to save San Francisco Bay seals, tropical Pacific Ocean dolphins and endangered sea turtles.

The institute's executive director....

"The Patriot Ledger," January 20, 1996

A mark is merely descriptive, and therefore prohibited from registration by Section 2(e)(1) of the Trademark Act, if it immediately conveys knowledge of the ingredients, qualities or characteristics of the goods or services with which it is used or is intended to be used. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). It is not necessary that the mark describe every feature, attribute, etc. It is sufficient if it describes a single, significant quality, feature, function or the like. In *re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). The question is not decided in a vacuum but in relation to the goods on which, or the services in connection with which, the mark is used or is intended to be used. See *In re Abcor Development Corporation*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

Applicant's website materials and his brochure, both of which have been made of record,⁴ show that applicant provides education and training programs and features exotic animals. In his website, applicant explains that by his providing the website, "T.I.G.E.R.S. and you can start helping endangered and exotic animals everywhere." The website explains that T.I.G.E.R.S. offers "rare and exotic species for all occasions" (to be used as animal actors). "With T.I.G.E.R.S. you will observe and learn about many rare and unique animals, in a new and completely different way." Tigers are one of applicant's featured animals: large photographs of tigers appear on the front of applicant's brochure, as well as on the home page of his website. The website invites viewers to "look at the tiger information page to find out some cool facts about tigers in general."

Applicant has admitted, and the evidence demonstrates, that TIGERS is descriptive of a major feature of applicant's services, i.e., that tigers are one of the species which are the subject of applicant's educational services. Applicant has also admitted, and his own

⁴ Although applicant filed his application pursuant to Section 1(b) of the Trademark Act, it appears that he is actually using the mark in connection with his services.

identification makes clear, that endangered species is the subject matter of his education and entertainment services. Applicant's materials also show that his animals may be referred to as "rare" species.

When the word TIGERS and the phrase THE INSTITUTE OF GREATLY ENDANGERED AND RARE SPECIES is combined into applicant's mark, T.I.G.E.R.S., THE INSTITUTE OF GREATLY ENDANGERED AND RARE SPECIES, the mark as a whole remains merely descriptive, immediately conveying to consumers that applicant's education services consist of an institute devoted to greatly endangered and rare species, and featuring tigers. Applicant has asserted that there is nothing in the record to suggest that "greatly endangered" is a term that is in common descriptive use with regard to educational services, or that "greatly endangered and rare species" is in common descriptive use with regard to such services. Although there is no evidence that others use these specific phrases to refer to their services, such evidence is not necessary to support a finding that a mark is merely descriptive. The commonly understood meanings of the words, when used in the phrase THE INSTITUTE OF GREATLY ENDANGERED AND RARE SPECIES, immediately conveys to

consumers that applicant's services involve highly endangered species and rare species.⁵

We also recognize that the word T.I.G.E.R.S. is an acronym of THE INSTITUTE OF GREATLY ENDANGERED AND RARE SPECIES, and that applicant has created the phrase in order to form the acronym. However, this does not change the merely descriptive significance of the mark. Just as a mere misspelling does not add trademark significance to an otherwise unregistrable merely descriptive term, see *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986), the addition of periods between the letters of TIGERS does not make this merely descriptive word into an inherently distinctive one. Consumers will readily recognize T.I.G.E.R.S. to be the equivalent of "tigers." In this connection, we note the numerous third-party registrations submitted by the Examining Attorney in which descriptive words in which the letters are separated by periods, including words which are used as acronyms in the marks, were either disclaimed, or the marks were registered on the Supplemental Register in recognition of their descriptiveness. See, for example, Supplemental Register

⁵ Although we hardly think it necessary, we list here definitions for "greatly" and "rare" that the Examining Attorney made of record: "greatly"—"to a great extent or degree"; "rare"—"seldom occurring or found: uncommon." Merriam-Webster Dictionary, www.m-w.com/cgi-bin/dictionary.

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registrations for C.A.R.S., CO. COSMETIC AUTO RECONDITIONING SPECIALISTS, CO. for automotive reconditioning, repair and maintenance (Reg. No. 2590064); P.R.A.Y. for series of curriculum books dealing with religious topics (Reg. No. 2497359); and K.I.D.S. for publication of magazines (Reg. No. 2252090); and, on the Principal Register, S.U.M.O. SUPER UNBELIEVABLE MASTERS OF BATTLE for toy action figures featuring electronically generated speech and special effects, registered with a disclaimer of SUMO and SUPER (Reg. No. 2648520); and CHILDREN LEARNING AWARENESS SAFETY & SELF-DEFENSE C.L.A.S.S. and design, registered with a disclaimer of CHILDREN LEARNING AWARENESS SAFETY AND SELF-DEFENSE CLASS (Reg. No. 2540535).

Decision: The refusal of registration is affirmed.